

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIACARL SCHLACHTE and
NANCY SCHLACHTE,

Plaintiffs,

No. C 07-6446 PJH

v.

**ORDER REQUIRING
FURTHER BRIEFING**

UNITED STATES OF AMERICA,

Defendant.

Defendant's motion to dismiss came on for hearing before this court on May 28, 2008. One of the central issues raised in connection with the motion is whether the court has subject matter jurisdiction over that portion of plaintiff's complaint that alleges a theft loss claim. In order to obtain guidance on this question, the court sought information from the parties at the hearing with respect to the administrative appeals process applicable to administrative claims for refund. Specifically, the court asked the parties for legal authority addressing the issue whether an administrative refund claim is considered exhausted after an initial denial, or upon completion of the appeals process. Neither party, however, was able to provide the court with sufficient guidance on this point.

For that reason, and because the court believes that resolution of this issue may be dispositive of the matters raised in defendant's motion, the court accordingly instructs the parties to submit further briefing limited to the following question: whether, for administrative exhaustion purposes, the IRS' decision disallowing plaintiffs' 2000 refund claim was final upon issuance of the original June 2006 denial, or whether the decision only became final for administrative exhaustion purposes after the IRS completed the appeal of the June 2006 denial. The parties are instructed to cite appropriate *legal* authorities in

1 support of their positions on this point. Plaintiffs shall submit a further brief addressing this
2 issue no later than **June 4, 2008**. Defendant may respond by submitting an opposition
3 brief no later than **June 11, 2008**. Neither brief shall exceed 5 pages. Thereafter, the
4 matter will be taken under submission, and a further order will be issued by the court
5 making a final determination on the merits of the motion to dismiss.

6

7 **IT IS SO ORDERED.**

8 Dated: May 28, 2008



9 PHYLIS J. HAMILTON
10 United States District Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28